IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 110 of 1986

in

FIRST APPEAL No 203 of 1976

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULABCHAND & CO,

Versus

KHOJA HUSAINBHAI MANJI & CO.

Appearance:

MR SURESH M SHAH for Appellants

SERVED BY RPAD - (N) for Respondent No. 1

MR MN MEHTA for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 21/02/2000

ORAL JUDGEMENT (Per J.M. Panchal, J.):

1. Judgment dated October 4/5, 1985, rendered by the learned Single Judge in First Appeal No.203 of 1976 dismissing the suit of the appellant for specific performance of contract to supply 500 mounds of groundnut at the rate of Rs.47.75 Paise per 40 Kgs. after accepting a sum of Rs.23,875/- or in the alternative for recovery of a sum of Rs.23,625/- as damages for breach of the contract, is assailed in the present appeal which is filed under clause 15 of the Letters Patent.

2. The appellant is a firm registered under the provisions of the Indian Partnership Act. On May 20, 1972, the appellant entered into an oral contract with respondent No.2 on behalf of the firm at Bhuj for delivery of 500 mounds of groundnut on or before Magsar Vad Amavas of Samvant Year 2029 (corresponding to January 4, 1973) at the rate of Rs. 47.75 paise per 40 Kgs. The respondents failed to deliver the goods on the due date as a result it was claimed by the appellant that the appellant suffered damages at the rate of Rs.35.25 paise per mound. Under the circumstances, the appellant instituted Special Civil Suit No. 12 of 1973 in the Court of learned Civil Judge (Senior Division), Kachchh at Bhuj and prayed the Court to decree specific performance of the contract or in the alternative to award damages of Rs.23,625/-

3. The respondents controverted the averments made in the plaint by filing written statement at Ex.16. It was inter alia averred that no agreement to sell groundnut as claimed by the appellant was entered into and, therefore, the suit was liable to be dismissed. In the alternative it was pleaded that the suit soda was in violation of prohibition imposed under the Forward Contracts (Regulation) Act, 1952 ('the Act' for short), and, therefore, the suit was not maintainable. According to the respondents, the defendant No.2 has three godowns in Lohar Chakla at Bhuj and as defendant No.2 had refused to let out one of the godowns to Mansukhlal Devraj, who is one of the partners of the appellant, false suit was filed and, therefore, the appellant was not entitled to the prayers claimed in the plaint.

4. Upon rival assertions of the parties, necessary issues for determination were framed by the trial Court at Ex.24. The parties adduced oral as well as documentary evidence in support of their respective

claim. On appreciation of evidence the trial Court held that the respondents had contracted to sell 500 mounds of groundnut at the rate of Rs.47.75 paise per 40 Kgs. through appellant's agent Premchand Popat on May 20, 1972. The trial Court concluded that it was proved by the appellant that the respondents did not deliver the suit goods at Anjar Mill as agreed and committed breach of the contract. On consideration of the provisions of the Act, the trial Court found that the suit contract was not illegal, void or inoperative under the provisions of the Act. The trial Court was of the opinion that case for specific performance of agreement to sell was not made out but the appellant was entitled to a sum of Rs.17,625/- as damages. In view of the above referred to conclusions the trial Court decreed the suit by judgment dated January 21, 1976 and held that the appellant was entitled to Rs.17,625/- as damages with proportionate costs and interest at the rate of 12% per annum from the date of the suit till realisation.

5. Feeling aggrieved by the said decree, the respondents - original defendants preferred First Appeal No. 203 of 1976. The learned Single Judge reappreciated the evidence and recorded a finding that the appellant failed to prove that the respondents had contracted to sell 500 mounds of groundnut at the rate of Rs.47.75 paise per 40 Kgs. through its agent Premchand Popat on May 20, 1972. In the alternative, the learned Single Judge further held that the said contract was hit by the provisions of the Act and was, therefore, not enforceable. In view of these conclusions, the learned Single Judge dismissed the suit by judgment and decree dated October 4/5, 1985 which has given rise to the present appeal.

6. Mr. S.M. Shah, learned counsel for the appellant, submitted that the evidence of Mansukhlal Devraj Shah, recorded at Ex.32, which is amply corroborated by evidence of other independent witnesses examined on behalf of the appellant, establishes that the respondents had contracted to sell 500 mounds of groundnut at the rate of Rs.47.75 paise per 40 Kgs. through its agent Premchand Popat on May 20, 1972 and, therefore, the finding recorded by the learned Single Judge to the contrary deserves to be set aside. What was claimed was that the contract entered into was a non-transferable specific delivery contract and as it was not within the mischief of Section 15, sub-sections 1 and 4 of the Act, the learned Single Judge was not correct in holding that the suit contract was hit by the provisions of the Act. It was emphasised that the judgment impugned

in the appeal is the result of misreading of the evidence as well as the provisions of the Act and, therefore, the appeal should be accepted.

7. Mr. M.N. Mehta, learned counsel for respondent No.3, contended that no reliable evidence is adduced by the appellant to prove the suit agreement and, therefore, the finding recorded by the learned Single Judge to the effect that the appellant failed to prove that the respondents had contracted to sell 500 mounds of groundnut at the rate of Rs.47.75 paise per 40 Kgs. through its agent Premchand Popat on May 20, 1972 should be upheld. In the alternative it was stressed that there is no delivery order on record of the case and as the contract in question was a transferable forward contract, it was hit by the provisions of the Act and therefore the finding of the learned Single Judge that the contract cannot be enforced, should be affirmed. What was stressed was that the defendant No.2 having refused to let out one of the godowns to one of the partners of the appellant firm, a false suit was filed and, therefore, the appeal should be dismissed.

8. We have heard the learned counsel for the parties and taken into consideration the evidence on record. In order to prove the suit contract, Mansukhlal Devraj Shah, who is one of the partners of the appellant firm, was examined at Ex.32. According to him, the oil mill of the appellant which was situated at Anjar was in need of groundnut for crushing and, therefore, an agreement to purchase 500 mounds of groundnut at the rate of Rs.47.75 paise per 40 Kgs. was entered into with the respondents at Bhuj through broker Premchand Popat on May 20, 1972 with a condition to deliver the soda goods at ex-mill at Anjar and on further condition for supply of empty gunny bags by the appellant firm to the respondents at the time of delivery. The witness testified before the Court that the delivery of the goods was to be given in Kartak Magsar Samvant Year 2029 and this soda was also entered in the soda book maintained by the broker. The witness claimed that in spite of repeated oral demands and postcard dated December 11, 1972 produced at Ex.36 the respondents failed to give delivery of soda goods. What was asserted by this witness on oath before the Court was that because of the breach of the contract committed by the respondents the plaintiff had suffered loss to the tune of Rs.23,625/- In cross-examination the witness stated that no brokerage was paid to Premchand Dalal as delivery of the goods was not effected by the respondents. The witness explained in cross-examination that the suit soda was prepared and entered into at the

shop of Premchand Popatlal & Company having its office at Bhid Bazar, Bhuj and at that time Premchand Nanji, Popatlal Nanji, Vadilal Sakarchand, Tribhovan and defendant No.2 Khoja Husainbhai Manji were present. The witness also explained as to in which circumstances the broker had addressed letter Ex.36 to the appellant. In lengthy cross-examination of this witness nothing could be elicited so as to destroy his version as given in the examination-in-chief.

9. The testimony of Rashmikant Jayshankar Bhatt, recorded at Ex.58, amply corroborates the case pleaded by the appellant. This witness is an Accountant in the appellant firm. The witness claimed that a soda register is maintained by the appellant firm and suit soda was entered into in the register. He produced relevant entry from the said register at Ex.37. The witness claimed that whenever goods were received as per soda, credit and debit entries were posted in the said register but as the respondent firm had not delivered the goods, no entry was made in this behalf in avak and javak register, ankada file, voucher file, etc. which were also being maintained by the appellant firm. The witness also produced the account book, Rojmal, khata vahi at Exhs.48 and 49. A futile attempt was made by the respondents to challenge the register and account books by alleging that they were not maintained in regular course of business but nothing substantial could be brought on record to discredit the register and account books.

10. Another witness Ishwarlal Vishanji Thacker, who was serving in the appellant firm as Clerk, was examined at Ex.60 to prove the suit soda. This witness stated before the Court that suit soda entry Ex.37 was posted in the soda register of the appellant firm by him. We may state that the evidence of this witness has virtually gone unchallenged.

11. The independent witness examined by the appellant to prove the suit soda is Premchand Nanji, through whom the suit soda was entered into. The evidence of this witness is recorded at Ex.62. The evidence of this witness goes to show that through him the suit soda was entered into and that the soda was also noted in his soda book which was regularly maintained. A certified copy of the said soda entry dated May 20, 1972 was produced by this witness at Ex.64. This witness claimed that at the time when the suit soda was entered into, he himself, his Mehtaji, defendant No.2 and Manubhai who was one of the partners of the appellant firm were present. It is borne out from the evidence of this witness that generally no

confirmation letter or postcard is written to the purchaser but in this case on specific instructions of Mansukhbhai who was one of the partners of the appellant, he had addressed post card Ex.36 dated May 20, 1972 to the appellant for confirmation of suit soda as Manubhai was to go to his native village. A reference to the postcard Ex.36 shows that it was addressed to the appellant firm and written by the broker informing the appellant firm about suit soda entered into with defendant No.2 at Bhuj on May 20, 1972. Reading of the evidence of this witness makes it manifest that neither the entry made in soda book of broker Ex.64 nor the postcard Ex.36 were seriously challenged by the respondents. The broker further deposed before the Court that no delivery of the soda goods was made by the respondents as per the agreement and breach of the agreement was committed by the respondents.

12. The evidence of the broker stands completely corroborated by evidence of Vadilal Sakarchand Vora examined at Ex.73. This witness was serving in the firm of the agent. The witness has testified before the Court that Manubhai, who is one of the partners of the appellant firm, had purchased 500 mounds of groundnut from the respondent and he himself had made entry in the soda register which is produced at Ex.64. The evidence of this witness is also not seriously challenged by the respondents.

13. Evidence of witness Tribhovan Kanji recorded at Ex.79 shows that he was serving in the firm of the broker Premchand Popatlal at Bhuj and that a soda for supply of groundnut between the appellant firm and respondent was entered into in the office of the firm and he was present at that time.

14. As against this, the version of the respondents is that as the defendant No.2 had refused to let out one of the godowns to Manubhai who is one of the partners of the appellant firm, a false suit was filed. This story is falsified by Husainbhai Manji who is examined on behalf of the respondents at Ex.84. This witness in no uncertain terms has admitted in cross-examination that he had rented three godowns to one Naran Nansi and had executed an agreement of sale in favour of son of Naran Nansi on May 11, 1972, i.e., prior to the date of suit soda which is May 20, 1972 and, therefore, the version of this witness that false suit was filed by the appellant as defendant No.2 had refused to let out one of the godowns to Manubhai who is one of the partners of the appellant stands falsified. The witness has further

admitted that he had no animosity with the appellant firm. This witness has also admitted that he had no animosity with Premchand Nanji.

15. On reassessment of the evidence on record we are of the opinion that the learned trial Judge was justified in recording a finding that it was proved by the appellant that the respondents had contracted to sell 500 mounds of groundnut at the rate of Rs.47.75 paise per 40 Kgs. through its agent Premchand Popat on May 20, 1972. Though this finding is upset by the learned Single Judge, we find that no cogent reasons have been recorded for the purpose of arriving at the conclusion that the suit contract is not proved. What has weighed with the learned Single Judge in disbelieving the suit contract is that the claim of the appellant firm that the appellant firm had to supply empty gunny bags at the time of delivery of the goods was highly improbable and no written contract was entered into between the parties. With respect to the learned Single Judge, it is difficult to agree with these conclusions. It is not the case of even the appellant that a written contract was entered into with the respondents for supply of groundnut. An oral agreement to sell moveables is permissible under the law. It was the common ground that no written agreement was entered into for the supply of groundnut. Moreover, condition requiring the appellant firm to supply empty gunny bags to the respondents at the time of delivery of suit goods cannot be termed as unnatural because in mercantile transaction such conditions are being stipulated on the basis of which the purchaser can claim certain rebate, etc. The finding recorded by the learned Single Judge to the effect that the relations between the parties were strained as the defendant No.2 had refused to let out one of the godowns to the partner of the appellant firm and therefore a false suit was filed is without any basis and not borne out from the evidence on record. The learned Single Judge has completely overlooked the admission made by the partner of the respondent firm to the effect that he had rented out three godowns to one Naran Nansi and had executed an agreement to sell in favour of son of Naran Nansi on May 11, 1972, i.e., prior to the suit soda which was entered into on May 20, 1972. To say the least the material admissions made by the witness of the respondents are not taken into consideration by the learned Single Judge and, therefore, the said finding has become vulnerable. On overall view of the matter, we hold that it is proved by the appellant that the respondent firm had contracted to sell 500 mounds of groundnut at the rate of Rs.47.75 paise per 40 Kgs. through its agent Premchand Popat on

16. This brings us to the question whether the suit soda is hit by the provisions of the Act. It will be convenient to set out the relevant statutory provisions bearing on this question. Section 2 (i) of the Act defines "ready delivery contract" as meaning "a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days after the date of the contract". "Forward Contract" is defined in section 2 (c) as meaning "a contract for the delivery of goods at a future date and which is not a ready delivery contract". Section 2 (m) defines "specific delivery contract" as meaning "a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned". Section 2(f) defines "non-transferable specific delivery contract" as meaning "a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable" and finally section 2(n) defines "transferable specific delivery contract" as meaning "a specific delivery contract which is not a non-transferable specific delivery contract".

Chapter III deals with the subject of recognized associations and contains a fasciculus of sections dealing with recognition of associations and the power to make rules and bye-laws of recognized associations. Section 5 provides that any association concerned with the regulation and control for forward contracts which is desirous of being recognised for the purposes of the Act may make an application in the prescribed manner to the Central Government and section 6 enacts that, if the Central Government is satisfied that it would be in the interest of the trade and also in the public interest to grant recognition to the association which has made an application under section 5, "it may grant recognition to the association in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member". Section 7 provides for withdrawal of recognition; section 8 confers power on the Central Government to call for periodical returns or direct inquiries to be made and

under this section the recognized association is required to furnish to the Central Government periodical returns relating to the affairs of its members and the Central Government can also order an inquiry in relation to the affairs of any of the members of the recognized association. Section 9 and 9A are not material and we need not pause to consider them. Section 10 empowers the Central Government to direct any recognised association to make any rules or to amend any rules made by the recognised association. Section 11, which is the only other section material to be considered, provides by sub-section (1) that any recognized association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts, and sub-section (2) of this section sets out, in particular, various matters in relation to which provision may be made by such bye-laws. Clause (g) of sub-section (2) refers to the provisions for "regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members.... or between a member of the recognized association and a person who is not a member ...." and clause (p) refers to the provision for "the regulation of dealings by members of their own account".

Proceeding further with the examination of the scheme of the Act, Chapter IV contains provisions conferring authority on the Central Government to prohibit certain classes of forward contracts. Section 15, sub-sections (1) and (4) enact:

"15. (1) The Central Government may, by notification in the Official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognized association or through or with any such member shall be illegal...

(4) No member of a recognized association shall, in respect of any goods specified in the notification under sub-section (1), enter into any contract on his own account with any person other than a member of the recognized association, unless he has secured the consent or authority of such person and discloses in the

note, memorandum or agreement of sale or purchase that he has bought or sold the goods, as the case may be, on his own account:

Provided that, where the member has secured the consent or authority of such person otherwise than in writing, he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract:...."

Sections 16 and 17 are not relevant and we will, therefore, pass them over and go on to section 18. Section 18, sub-section (1), enacts a general exemption from the operation of the provisions contained in Chapter III and IV and says that:

"Nothing contained in Chapter III or Chapter IV shall apply to non-transferable specific delivery contracts for the sale or purchase of any goods."

To analyse the scheme of the Act, it divides contracts of sale of goods into two categories "ready delivery contracts" and "forward contracts". Forward contracts are classified into those which are "specific delivery contracts" and those which are not. Then again "specific delivery contracts" are divided into "transferable specific delivery contracts" and "non-transferable specific delivery contracts". Section 18 (1) exempts from the operation of the Act "non-transferable specific delivery contracts". The net result of these provisions is that all forward contracts except those which are non-transferable specific delivery contracts would be within the operation and mischief of section 15, sub-section (1) and (4). The main contention of the appellant, therefore, is that the impugned contract resulting in the loss of Rs.23,625/- was non-transferable specific delivery contract and it was not required to pass the test of section 15, sub-sections (1) and (4). On this contention the question which falls for determination is whether the impugned contract was non-transferable specific delivery contract. The evidence on record establishes that it was specific delivery contract. It was between named buyer and sellers, the goods were specified as

also the period during which they had to be actually delivered and their price was fixed. But the controversy was whether they were transferable or non-transferable and that is the controversy which we shall now proceed to examine.

It is clear from the definition contained in section 2(f) that a non-transferable specific delivery contract means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable. What is, therefore, necessary to be established by the appellant in order to claim the benefit of the exemption under Section 18 (1) is that the rights or liabilities under the impugned contract were not transferable. Now, at one time there was conflict of opinion amongst some of the High Courts on the question whether a specific clause prohibiting transfer must be included in the contract in order to make it a non-transferable specific delivery contract but in view of the decision of the Supreme Court in Khardah Co. Ltd. v. Raymon & Co, AIR 1962 SC 1810, it is now well settled that no such specific clause prohibiting transfer is necessary in the contract. It is sufficient if, on a reasonable interpretation of the contract aided by such considerations as can legitimately be taken into account, it appears that the agreement between the parties was that the rights or liabilities under the contract were not to be transferred. As observed by Venkatarama Aiyar J., speaking on behalf of the Supreme Court:

"We agree that when a contract has been reduced to writing we must look only to that writing for ascertaining the terms of the agreement between the parties but it does not follow from this that it is only what is set out expressly and in so many words in the document that can constitute a term of the contract between the parties. If on a reading of the document as a whole, it can fairly be deduced from the words actually used therein that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that

> term. The terms of a contract can be express or implied from what has been expressed. It is in the ultimate analysis a question of construction of the contract. And again it is well-established that in construing a contract it would be legitimate to take into account surrounding circumstances. Therefore on the question whether there was an agreement between the parties that the contract was to be non-transferable, the absence of a specific clause forbidding transfer is not conclusive. What has to be seen is whether it would be held on a reasonable interpretation of the contract, aided by such considerations as can legitimately be taken into account that the agreement of the parties was that it was not to be transferred. When once a conclusion is reached that such was the understanding of the parties, there is nothing in law which prevents effect from being given to it."

This is the test which must be applied for the purpose of determining whether the impugned contracts were non-transferable specific delivery contracts.

17. As discussed above, it is now well settled that a specific clause prohibiting transfer need not be included in the contract in order to make it non-transferable specific delivery contract. It is well established that in construing a contract it would be legitimate to take into account the surrounding circumstances. Therefore on the question whether there was an agreement between the parties that the contract was to be non-transferable, the absence of a specific clause forbidding transfer is not conclusive. What has to be seen is whether it could be held on a reasonable interpretation of the contract, aided by such considerations as can legitimately be taken into account that the agreement of the parties was that it was not to be transferred. When once a conclusion is reached that such was the understanding of the parties, there is nothing in law which prevents effect from being given to it. On evidence, it is found that the contract for supply of groundnut was between the appellant and the respondents i.e., named buyer and seller, the goods were specified i.e., groundnut, so also the period during which they had to be actually delivered was also

specified and it was stipulated between the parties that the respondents would supply the goods in Kartak Magsar Vad Amavas of Samvant Year 2029. The price of the goods was also fixed i.e., Rs.47.75 per 40 Kgs. The goods were to be delivered at Anjar Mill belonging to the appellant. Having regard to all these relevant considerations, we are of the view that the rights under the contract were not transferable by either party to the contract and the contemplation of the parties was that they should themselves carry out the contract. Reliance placed by the learned counsel for respondent No.3 on the decision of the Supreme Court in State of Gujarat v. Manilal Joitaram & Co., AIR 1968 SC 653, is of no avail to establish that the suit soda was a transferable specific delivery contract. In that case the accused were members of an unregistered association which had an office where the members and brokers used to enter into contracts for the sale and purchase of groundnut oil. These contracts were largely speculative. A large number of contracts used to be entered into but were not performed by actual delivery and payment of price. The contracts, although they appeared to be non-transferable specific delivery contracts were not intended to be completed by delivery immediately or within a period of 11 days from the date of the contract. In fact week after week contracts were cancelled by cross-transactions and there was no delivery. Instead of payment of price losses resulting from the cross-transactions were deposited by the operators in loss with the Association. Further, on the due date also, there was no delivery but adjustment of all contracts of sales against all contracts of purchase between the same parties and delivery was of the outstanding balance. Even this delivery was often avoided by entering into fresh contract at the rate prevailing on the due date, as part of the transactions in the next period. In other words the transactions on paper did seem to comply with the regulations but in point of fact they did not and the Association arranged for settlement of the entire transactions without delivery. In the light of these facts, the Supreme Court has held that in view of the proviso to Section 18 (1) of the Act, the contracts were not non-transferable specific delivery contracts. In our view, the principle laid down in this decision is not applicable to the facts of the present case. It is not the case of the respondents that any contract was entered into between the appellant and the respondents through an unregistered association. It is also not proved by the respondents that the suit soda was speculative in nature. It is not the case of the respondents that a large number of contracts used to be entered into with the appellant firm but were not

performed by actual delivery and payment of price. The respondents have not pleaded that the contract was not intended to be completed by delivery of the goods. It is nobody's case that week after week contracts entered into between the appellant and respondents were cancelled by cross transactions and there was no delivery and that instead of payment of price losses resulting from the cross transactions were deposited by the parties with any association. Further it is not the case of any one that delivery was to be avoided by entering into fresh contract at the rate prevailing on the due date as part of the transactions in the next period. The respondents have failed to establish that the transaction on paper did seem to comply with the regulations but in point of fact it did not and that any association or broker had arranged for settlement of the entire transaction without delivery. We notice that so far as the present transaction is concerned, none of the elements stipulated in proviso to section 18 (1) of the Act are present and, therefore, on the basis of the principle laid down in State of Gujarat (supra) the suit soda cannot be considered to be transferable specific delivery contract within the meaning of the Act. Similarly, the decision in Shah K.R. v. Union of India, XIV GLR 960 does not help the respondents as in this case we are not concerned with any notification issued by the Central Government under section 18 (3) of the Act. Having regard to the state of affairs, we hold that the suit soda is a non-transferable specific delivery contract for the sale or purchase of groundnut and is not hit by the provisions of the Act.

18. The last question to be decided is whether the appellant is entitled to damages. It may be mentioned that the suit for specific performance of agreement to sell was not decreed but alternative prayer for damages was decreed by the trial Court. The decree of the trial Court was not challenged by the appellant before the higher forum either by way of filing an appeal or by way of filing cross-objections. The evidence led by the appellant establishes that at the relevant time i.e., in May 1972, the price of groundnut was Rs.75/- per 40 Kgs. As was agreed between the parties, the delivery of the groundnut was to be made by the end of Magsar Vad Amavas Samvant Year 2029. Therefore, the appellant incurred loss to be calculated on the basis of difference of market rate prevailing at the time of delivery of the goods and the contract rate which comes to Rs.35.25 paise per 40 Kgs. If the damages are calculated on that basis it become evident that the appellant suffered loss of Rs.17,625/- Therefore, in view of the provisions of

Section 73 of the Indian Contract Act the appellant would be entitled to claim Rs.17,625/- as damages. The trial Court has applied correct principles for working out damages as is event from paragraphs 21 and 22 of the judgment and we see no reason to take a different view of the matter. The learned Single Judge has not touched this aspect at all and no attempt was made before us by the learned counsel for the respondents to challenge the finding recorded by the trial Court to the effect that the appellant firm would be entitled to damages of Rs.17,625/- Therefore, we hold that the appellant firm is entitled to recover an amount of Rs.17,625/- as compensation or damages for non-delivery of the soda goods from the respondents.

19. For the foregoing reasons, the appeal succeeds. The judgment impugned in this appeal rendered by the learned Single Judge is hereby set aside and decree passed by the trial Court is restored. It is held that the appellant would be entitled to realise a sum of Rs.17,625/- with proportionate costs and running interest at the rate of 12% per annum from the date of the suit till realisation from the respondents. The respondents to bear their own costs and do pay the costs of the appellant. The office is directed to draw decree accordingly.

(karan)